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7 Attorneys for the United States of America

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) Criminal Case No. 08CR1091-JLS  
11 )  
12 Plaintiff, ) DATE: MAY 16, 2008  
13 v. ) TIME: 1:30 p.m.  
14 )  
15 INEZ MARIE PARQUETTE, (1) )  
14 THOMAS FRANK PARQUETTE(2), ) GOVERNMENT'S RESPONSE AND  
16 ) OPPPOSITION TO DEFENDANT'S  
17 ) MOTIONS:  
18 )  
19 Defendants. ) (1) TO COMPEL DISCOVERY  
20 ) (2) FOR LEAVE TO FILE FURTHER  
 ) MOTIONS  
 )  
 ) TOGETHER WITH STATEMENT OF FACTS,  
 ) MEMORANDUM OF POINTS AND  
 ) AUTHORITIES AND GOVERNMENT'S  
 ) MOTIONS FOR RECIPROCAL DISCOVERY  
 )

21 The United States of America, by its counsel, Karen P. Hewitt,  
22 United States Attorney, and Paul S. Cook, Assistant United States  
23 Attorney, hereby responds to and opposes Defendant's Motions: To  
24 Compel Discovery and For Leave To File Further Motions. This response  
25 and opposition is based upon the files and records of the case,  
26 together with the attached statement of facts and memorandum of points  
27 and authorities. The Government also hereby files its motion for  
28 reciprocal discovery.

2  
STATEMENT OF FACTS

3 On Saturday, March 22, 2008 at 9:50 p.m., Defendant Inez  
4 Parquette drove a 1995 Chrysler Cirrus, registered to a Francisco  
5 Lopez, into the United States from Mexico at the Calexico, California,  
6 West Port of Entry. Her husband, Defendant, Thomas Parquette was a  
7 passenger in the car. At Primary, Inez told the CBP Officer that the  
8 car belonged to her husband's friend, Francisco Lopez, and they were  
9 returning to their home in Hesperia, California after spending the  
10 night in San Felipe, Mexico. The Officer observed that Inez became  
11 nervous during the primary inspection and referred the car to Vehicle  
12 Secondary for further inspection.

13 In Secondary, Inez told the Officer that she and her husband had  
14 been in Mexicali, Mexico for the day and had gone to some clubs.  
15 Thomas told the Officer that the car belonged to his friend who lived  
16 in Apple Valley, California, but whose name he could not remember.  
17 A narcotic detector dog alerted to the dashboard area and a in  
18 subsequent search, Officers found twelve packages, weighing 10.40  
19 kilograms (22.88 pounds), of heroin in a non-factory compartment in  
20 the dashboard where the air bags are normally located.

21 In the early morning of March 23<sup>rd</sup>, both Defendant's were  
22 informed of their Miranda rights. Thomas requested an attorney and  
23 he was not questioned. Inez indicated she understood her rights,  
24 signed a written waiver, and agreed to speak to the agents without an  
25 attorney present. In a recorded interview she denied knowledge of the  
26 drugs. She told the Agents that she and her husband had borrowed the  
27 car in Hesperia and driven down to Mexicali on Friday, March 21, 2008.

1 They stayed in Mexico briefly and at her insistence returned to the  
2 United States on Friday March 21<sup>st</sup>. Persuaded by her husband to return  
3 to Mexico, they drove back to Mexicali the same day, and spent the  
4 night in a hotel. They checked out of the hotel around 4:00 p.m. on  
5 Saturday, March 22<sup>nd</sup> and headed back to the United States. She  
6 claimed that they never relinquished possession of the car, other than  
7 when parked at the hotel.

8 Agents verified that the Defendants had driven this same car into  
9 the United States at the Calexico West POE, on March 21, 2008, at  
10 approximately 9:20 p.m. At that time the car was referred to  
11 Secondary and inspected. No drugs were found in the car at that time  
12 (24 hours before the current arrest).

13 **II**

14 **THE GOVERNMENT HAS AND WILL CONTINUE TO COMPLY WITH**  
**ITS DISCOVERY OBLIGATIONS**

15 The United States is aware of its discovery obligations, and will  
16 continue to comply with its obligations under Brady v. Maryland, 373  
17 U.S. 83 (1963), the Jencks Act (18 U.S.C. §3500) and Rule 16 of the  
18 Federal Rules of Criminal Procedure. and will continue to comply with  
19 all discovery rules. The United States has provided Defendants with  
20 61 pages of discovery and CDs of both Defendants' interviews. The  
21 discovery contains the arrest reports, Defendants' criminal record,  
22 copies of items seized, and photographs of the vehicle and drugs.  
23 Regarding certain specific requests made by the Defendant, the United  
24 States responds as follows:  
25  
26  
27

1       1.    Rule 404(b) Evidence

2       Currently the Government is unaware of any 404(b) evidence that  
3 it intends to present.    However, the Government will provide  
4 Defendants with notice of its intent to present evidence pursuant to  
5 Rule 404(b) three weeks before trial or as otherwise ordered by the  
6 Court.

7       2.    Evidence Seized and Preservation

8       The Government will preserve all evidence seized from the  
9 Defendants, most of which has been provided in discovery. Defendants  
10 may make an appointment, at a mutually convenient time, to inspect any  
11 other evidence.   If Defendants want the entire amount of the seized  
12 drug preserved for re-testing or re-weighing, the Government would not  
13 oppose a Court Order to this effect, if Defendants seriously contest  
14 either the weight or that the substance seized is heroin, otherwise  
15 there is no need to re-weigh or re-analyze.

16      3.    Tangible Objects

17      The Government will provide copies of or an opportunity to  
18 inspect all documents and tangible things material to the defense,  
19 intended for use in the Government's case in chief, or seized from  
20 Defendant.

21      4.    List and Addresses of Witnesses

22      The Government has provided Defendant with the investigative  
23 reports relating to this crime.   These reports include the names of  
24 the law enforcement personnel, eye witnesses and other people  
25 interviewed as part of the follow-up investigation.   The Government  
26 will provide Defendant with a list of all witnesses which it intends  
27 to call in its case-in-chief at the time the Government's trial  
28

1 memorandum is filed, although delivery of such list is not required.  
 2 See United States v. Dischner, 960 F.2d 870 (9th Cir. 1992); United  
 3 States v. Culter, 806 F.2d 933, 936 (9th Cir. 1986); United States v.  
 4 Mills, 810 F.2d 907, 910 (9th Cir. 1987). Defendant, however, is not  
 5 entitled to the production of addresses or phone numbers of possible  
 6 Government witnesses. See United States v. Hicks, 103 F.3d 837, 841  
 7 (9th Cir. 1996) ("A district court that orders the Government and the  
 8 defendant to exchange witness lists and summaries of anticipated  
 9 witness testimony in advance of trial has exceeded its authority under  
 10 Rule 16 of the Federal Rules of Criminal Procedure and has committed  
 11 error."); United States v. Thompson, 493 F.2d 305, 309 (9th Cir. 1977).

12 Federal Rule of Criminal Procedure 16 does not require the  
 13 government (or the defense) to disclose the names and addresses of  
 14 witnesses pretrial. Indeed, the Advisory Committee Notes reflect that  
 15 the Committee rejected a proposal that would have required the parties  
 16 to exchange the names and addresses of their witnesses three days  
 17 before trial:

18 The House version of the bill provides that each party, the  
 19 government and the defendant, may discover the names and  
 20 addresses of the other party's witnesses 3 days before  
 21 trial. The Senate version of the bill eliminates these  
 22 provisions, thereby making the names and addresses of a  
 23 party's witnesses nondiscoverable. The Senate version also  
 24 makes a conforming change in Rule 16(d)(1). The Conference  
 25 adopts the Senate version.

26 A majority of the Conferees believe it is not in the  
interest of the effective administration of criminal  
justice to require that the government or the defendant be  
forced to reveal the names and addresses of its witnesses  
before trial. Discouragement of witnesses and improper  
contact directed at influencing their testimony, were  
deemed paramount concerns in the formulation of this  
policy.

1 United States v. Napue, 834 F.2d 1311, 1317-19 (7th Cir. 1987)  
2 (quoting Rule 16 advisory committee notes) (emphasis added).

3 The Government will not provide Defendants with names and  
4 addresses of witnesses it does not intend to call.

5 5. Criminal Investigation of Any Government Witnesses

6 The Government is unaware of any criminal involvement by any  
7 prospective government witness, or that any witness is under  
8 investigation. Defendant's reliance on United States v. Chitty, 760  
9 F.2d 425 (2nd Cir. 1985), in support of these requests is misplaced.  
10 In Chitty, the Second Circuit held that such information was  
11 discoverable where the Government witness had been told he was under  
12 investigation and thus had a motive to testify favorably for the  
13 Government. Id. at 428.

14 Although the Government will provide conviction records, if any,  
15 which could be used to impeach a witness, the Government is under no  
16 obligation to turn over the criminal records of all witnesses. United  
17 States v. Taylor, 542 F.2d 1023, 1026 (8th Cir. 1976). When  
18 disclosure need only extend to witnesses the Government intends to  
19 call in its case-in-chief. United States v. Gering, 716 F.2d 615, 621  
20 (9th Cir. 1983); United States v. Angelini, 607 F.2d 1305, 1309 (9th  
21 Cir. 1979).

22 The Government will turn over evidence within its possession  
23 which could be used to properly impeach a witness who has been called  
24 to testify. Defendant is not entitled, however, to any and all  
25 evidence that a prospective witness is under investigation by federal,  
26 state or local authorities for misconduct.

27

28

1       6.    Bias, Motive to Lie and Impeachment Evidence Of Prospective  
2       Witnesses

3       The Government is unaware that any information demonstrating that  
4       a witness is biased against Defendant or has a motive to lie. As  
5       noted above, the Government will comply with its obligations under  
6       Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. laboratory  
7       States, 405 U.S. 150 (1972).

8       7.    Evidence Affecting Perception, Recollection,  
9       Ability to Communicate,

10      The Government is unaware of any witness with perception or  
11     recollection problems.

12      8.    Reports of Scientific Tests or Examinations

13      The United States will provide Defendant with any scientific  
14     tests or examinations, in accordance with Fed. R. Crim. P.  
15     16(a)(1)(F), including the drug analysis when it is received from the  
16     DEA laboratory.

17      9.    Henthorn Material

18      The Government will review the requested personnel files of all  
19     federal law enforcement individuals who will be called as witnesses  
20     in this case for Brady material. The Government will request that  
21     counsel for the appropriate federal agency conduct such review. See  
22     United States v. Jennings, 960 F.2d 1488, 1492 (9th Cir. 1992).

23      Pursuant to United States v. Henthorn, 931 F.2d 29 (9th Cir.  
24     1991) and United States v. Cadet, 727 F.2d 1452 (9th Cir. 1984), the  
25     United States agrees to "disclose information favorable to the defense  
26     that meets the appropriate standard of materiality ..." Cadet, 727  
27     F.2d at 1467, 1468. Further, if counsel for the United States is  
28     uncertain about the materiality of the information within its

1 possession in such personnel files, the information will be submitted  
2 to the Court for in camera inspection and review.

### 3 10. Informant Information

4 The Government, at this time, is unaware of an informants in this  
5 case.

## 6 11. Expert Witnesses

7 The Government will notify Defendant of its expert witnesses,  
8 such as the DEA chemist and drug value expert, and will comply with  
9 Fed. R. Crim. P. 16(a)(1)(G).

III

LEAVE TO FILE FURTHER MOTIONS

12 The Government has no objection to this motion.

IV

THE GOVERNMENT'S MOTION FOR RECIPROCAL  
DISCOVERY SHOULD BE GRANTED

16 The discovery provided to Defendants, at their request, includes  
17 documents and objects which are discoverable under Rule 16(a)(1)(E).  
18 Consequently, the Government is entitled to discover from the  
19 defendant any books, papers, documents, data, photographs, tangible  
20 objects, buildings or places, or copies or portions of any of these  
21 items that are in Defendant's possession, custody or control and which  
22 Defendant intends to use in the Defendant's case-in-chief. See Rule  
16(b)(1)(A), Fed. R. Crim. P..

23 Fed. R. Crim. P. 26.2 requires the production of prior statements  
24 of all witnesses, except Defendants'. The new rule thus provides for  
25 the reciprocal production of Jencks statements. The time frame  
26 established by the rule requires the statement to be provided after

1 the witness has testified, as in the Jencks Act. Therefore, the  
2 United States hereby requests that Defendants be ordered to supply all  
3 prior statements of defense witnesses by a reasonable date before  
4 trial to be set by the Court. This order should include any form  
5 these statements are memorialized in, including but not limited to,  
6 tape recordings, handwritten or typed notes or reports.

V

## CONCLUSION

9 For the above stated reasons, the Government respectfully  
10 requests that the Defendant's motions be denied, except where  
11 unopposed, and the Government's motion for reciprocal discovery be  
12 granted.

13 Date: May 9, 2008.

Respectfully submitted,

KAREN P. HEWITT  
United States Attorney

s/Paul S. Cook  
PAUL S. COOK  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Case No. 08CR1091-JLS  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 INEZ MARIE PARQUETTE(1), ) CERTIFICATE OF SERVICE  
 THOMAS FRANK PARQUETTE(2), )  
 Defendants. )

IT IS HEREBY CERTIFIED THAT:

I, Paul S. Cook, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of Government's Response and Opposition to Defendant's Motions on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. MICHAEL E. BURKE  
2. LINDA LOPEZ

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MAY 9, 2008.

s/Paul S. Cook

PAUL S. COOK